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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,051	12/22/2000	Louis B. Rosenberg	IMM013C	4008

7590 05/13/2002

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EXAMINER

BRIER, JEFFERY A

ART UNIT

PAPER NUMBER

2672

DATE MAILED: 05/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/748,051

Applicant(s)

ROSENBERG ET AL.

Examiner

Jeffery A. Brier

Art Unit

2672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 83,86,88-99,104,105,107,110 and 111 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 83,86,88-99,104,105,107,110 and 111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 05/02/2002 has been entered. This amendment satisfies the objections and rejection set forth in paper no. 9 mailed on 03/08/2002.
2. This amendment did enter redundant text into claim 110 which will be further discussed below.

### ***Claim Objections***

3. Claim 110 is objected to because of the following informalities: at lines 5-6 and 6-7 the same limitation is repeated, "said plurality of members of said linkage are formed as a closed-loop linkage". Appropriate correction is required.

### ***Double Patenting***

4. Claims 83,86,88-99,104,105,107,110 and 111 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8/6/4/1, 9/8/6/4/1 and 10/4/1 of U.S. Patent No. 5,805,140. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims are broader but still claim the same general invention in an obvious way. The difference between claim 86 and patented claim 8/6/4/1 is claim 86 does not claim the actuators while claim 83/86 does claim the actuators and claim 6 adds to claim 8/6/4/1 limitations that are found in pending claim 88/86 but not in claim 86. The same applies to independent claims 99 and 110. The differences between pending claims 83,86,88-99,104,105,107,110 and 111 are obvious variations of patented claim 8/6/4/1.

Pending claim 91 correspond to patented claim 9. Pending claim 92 corresponds to patented claim 10.

From the above comparisons it is clear that the pending claims are broader versions of the patented claims. Broader versions of patented claims are an obvious way for applicant to claim the same thing patented. *In re Vogel*, 422 F.2d 438, 164 USPQ 619, 623 (CCPA 1970). Vogel stated on page 623 "*The answer to the second analysis question, therefore, is yes, and the claim is not allowable in the absence of a terminal disclaimer. The correctness of this conclusion is demonstrated by observing that claim 10, by reciting "meat," includes pork. It is further noted that viewing the inventions in reverse order, i.e. as though the broader claims issued first, does not reveal that the narrower (pork) process is in any way unobvious over the broader (meat) invention disclosed and claimed in the instant application.*". Thus, this application's broader claims are not unobvious over the above identified patented claims.

***Allowable Subject Matter***

5. Claims 83,86,88-99,104,105,107,110 and 111 would be allowable if a proper terminal disclaimer is filed to overcome the obviousness-type double patenting rejection, set forth in this Office action.
6. Any inquiry concerning this communication or earlier communications from

Art Unit: 2672

the examiner should be directed to Jeffery A. Brier whose telephone number is (703) 305-4723. The examiner can normally be reached on M-F from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi, can be reached at (703) 305-4713).

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

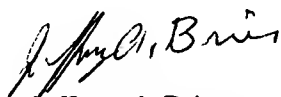
Washington, D.C. 20231

**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

  
Jeffery A Brier  
Primary Examiner  
Art Unit 2672